

Ps 1210.22 INTERNAL AFFAIRS, OFFICE OF

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BP-S194



BP-S595





Program Statement

OPI: DIR
NUMBER: 1210.22
DATE: 10/1/2001
SUBJECT: Internal Affairs,
Office of

1. **PURPOSE AND SCOPE.** To instruct staff on the procedures for reporting allegations of staff misconduct to the Office of Internal Affairs (OIA), and for conducting investigations of allegations.

Pursuant to the Inspector General Act of 1978, the Inspector General Act Amendments of 1988, and the additional authority vested in the Inspector General by the Attorney General, the specified powers as set forth in 28 U.S.C. Section 3050 are re-delegated to the Federal Bureau of Prisons, OIA, to the extent that the exercise of such authority is necessary and properly related to the functions of the U.S. Department of Justice, Office of the Inspector General (OIG).

It is the Bureau's policy to strive for professionalism, efficiency, effectiveness, responsiveness, productivity, and integrity. This requires the identification of mismanagement, waste, fraud, and abuse, as well as the investigation of violations and allegations of violations per the Standards of Employee Conduct.

OIA ensures that all allegations of this type are investigated and will reach its findings based upon clearly established facts.

To maintain its high level of independence and credibility, OIA is a component of the Director's Office, Bureau of Prisons.

2. **SUMMARY OF CHANGES.** This revision streamlines procedures for reporting minor staff misconduct. Numerous changes have been incorporated which are too lengthy to list within this section.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. Waste, fraud, abuse, mismanagement, and staff misconduct will be reduced.

b. The security of Bureau facilities and protection of the public will be enhanced by sound investigative procedures practiced by knowledgeable professionals.

c. Evidence will be properly collected, handled, and preserved. When appropriate, evidence will be provided to other agencies.

d. Investigations of employee misconduct will be reported to the appropriate Chief Executive Officer (CEO) and OIA.

e. Criminal acts will be promptly referred to the appropriate law enforcement agencies having jurisdiction.

f. Reports will be completed accurately and promptly.

g. All cases will be tracked to ensure they are resolved promptly and data is preserved electronically and in a case file, both according to National Archives and Record Keeping Standards.

4. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

PS 1210.17 Internal Affairs, Office of (8/4/97)

b. **Directives Referenced**

PS 1210.16 Boards of Inquiry, Regional Inquiry Teams and Local Inquiry Teams (5/7/97)

PS 1380.05 Special Investigative Supervisors Manual (8/1/95)

PS 3420.09 Standards of Employee Conduct (2/5/99)

PS 5110.13 Polygraph Test, Administering (12/15/99)

DOJ 2900.5A Responsibilities for the Prevention, Detection, and Reporting of Waste, Fraud, and Abuse in Department of Justice Programs and Activities

Master Agreement between the Federal Bureau of Prisons and the Council of Prison Locals

5. **STANDARDS REFERENCED.** None

6. **RESPONSIBILITIES.** OIA ensures that all violations and allegations of violations of staff misconduct per the Standards of Employee Conduct, including criminal matters, are reported to the U.S. Department of Justice, OIG.

OIA serves as the point of contact so that all employees at all levels can report instances of:

- C mismanagement,
- C prohibited personnel practices,
- C staff misconduct, and
- C other issues covered by the "whistle blower" provisions of the Civil Service Reform Act (CSRA) of 1978.

OIA is to:

a. Conduct special investigations, inquiries, and reviews as requested by the Director.

b. Monitor investigations conducted at the institution, regional, and Central Office level and provide the investigators with technical guidance and expertise. This technical guidance and expertise will include instruction on the Master Agreement with respect to the union's role during investigations. This will include established case law concerning Weingarten investigatory meetings.

The council president, through the Chief of the Labor Management Relations Branch, will have the opportunity to provide input with respect to the above subject.

c. Monitor the Government-Issued Charge Card Program to detect abuse and to ensure all debts associated with government business are satisfied in a timely manner.

d. Maintain a secure computer database of all cases and complaints in order to provide statistical analysis of trends and ensure accountability.

7. **MISCONDUCT CLASSIFICATIONS**

a. **Classification 1** cases (formerly A Allegations) are defined as allegations made against any employee or contractor which, if substantiated, would constitute a prosecutable offense (except for Classification 3 cases such as traffic violations, DUI, DWI, etc.) and any allegation of serious misconduct.

Examples of Classification 1 misconduct include, **but are not limited to**, the following:

- C Physical or sexual abuse of persons in custody, aliens, informants, protected persons, undercover operatives, persons under investigation, or persons seeking benefits from the Department
- C Bribery, graft or conflict of interest including, the offer or acceptance of anything of value
- C Fraud or extortion
- C Theft conversion or embezzlement of government funds or property in an amount greater than \$100
- C Sale, possession, or trafficking in illegal drugs
- C Submission of false claims
- C False statements
- C Concealment, removal, or mutilation of official documents
- C Smuggling, including alien smuggling
- C Trafficking of contraband or providing contraband to any person in custody
- C Discrimination or sexual harassment accompanied by violence, physical force, or other egregious misconduct
- C Use of a firearm in a manner which appears to constitute a violation of law or Department regulations
- C Criminal civil rights violations
- C Facilitating the escape of any person in custody
- C Unauthorized disclosure of sensitive information, including information in any electronic system
- C Unauthorized interception of wire or oral conversation(s)
- C Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1

b. **Classification 2** cases (formerly B Allegations) are defined as allegations against any employee or contractor which involve violations of rules, regulations, or law that, if substantiated, would not likely result in criminal prosecution, but constitute serious misconduct.

Examples of Classification 2 Cases include, **but are not limited to**, the following:

- C Threatening assault
- C Use of government facilities, supplies, equipment, services, personnel, or identification for other than official purposes

- C Off-duty misconduct resulting in felony arrest or conviction and misdemeanor crimes of domestic violence (18 U.S.C. Section 921)
- C Discrimination and sexual harassment not included in Classification 1
- C Breach of security or safety in a DOJ program or operation resulting in escape or serious injury; disclosure of confidential informants or other protected persons; or endangering employees, contractors, and clients of the DOJ
- C Use of a government charge card for other than its intended purpose in an amount greater than \$1,000
- C Gambling or promotion of gambling on government property
- C Discharge of a firearm other than by accident
- C Destruction of government property
- C Inappropriate relationships between employees and persons in custody, aliens, informants, protected persons, undercover operatives, persons under investigation, or persons seeking benefits from the Department not included in Classification 1
- C Unauthorized release of information not included in Classification 1
- C Failure to properly account for funds, valuables, and personal property of persons in custody
- C Falsification of employment documents
- C Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 2
- C Any allegation against a GS-13 or above management official (non-bargaining unit) that does not come under Classification 1

c. **Classification 3** cases (formerly C Allegations) are defined as allegations of misconduct involving employees or contractors which ordinarily have less impact on institutional operations. However, these acts of misconduct may result in severe adverse or disciplinary action, depending on the severity of the misconduct, in accordance with the Table of Penalties contained in the Program Statement on Standards of Employee Conduct.

Examples of Classification 3 Cases include, **but are not limited to:**

- C Unprofessional conduct (disorderly conduct or abusive language)
- C Conducting personal business during duty hours
- C Refusal or failure to follow instructions or procedures, failure to respond to an emergency, failure to properly supervise or control persons in custody

- C Off-duty misconduct resulting in misdemeanor arrest excluding misdemeanor crimes of domestic violence (18 U.S.C. Section 921).
- C Unauthorized use/misuse of a government vehicle, or other government property
- C Failure to honor just debts
- C Accidental discharge of a firearm
- C Use of a government credit card for other than its intended purpose in an amount not exceeding \$1,000
- C Violations of security regulations
- C Intoxication or consumption of alcohol while on duty

Ordinarily, CEOs can proceed with local investigations of Classification 3 Allegations for staff occupying bargaining unit or GS-12 and below non-bargaining unit positions without first obtaining OIA approval. CEOs will, however, prepare a monthly report (designed and formatted by OIA) to include all Classification 3 Allegation investigations they have initiated, complete with the subject name(s), and a brief summary of the reported misconduct, and forward it to OIA so monitoring of these cases may begin.

Upon concluding the local investigations, a one page case summary form (BP-S663.012) will be sent to OIA to effect closure and to ensure accurate statistics are maintained. Copies of entire investigative packets do not need to be sent to OIA for Classification 3 cases.

The investigative packet must be retained locally, in a secure area, inaccessible to inmates and accessible to authorized staff only, in accordance with the National Archives and Records Administration records schedule.

8. REPORTING INCIDENTS OF STAFF MISCONDUCT

a. **Staff Reporting.** In accordance with the Bureau's Standards of Employee Conduct, staff who become aware of any violation or alleged violation of the Standards of Employee Conduct must report them to management (the CEO or OIA) or to the OIG at the Department of Justice.

- C OIG has established a toll-free hotline (1-800-869-4499) which is available to anyone wishing to report Department of Justice employees' misconduct, as well as fraud, waste, or abuse in government.
- C All Bureau staff are encouraged to use the OIG hotline if they wish to remain anonymous or fear retaliation or reprisal.

- C To report violations directly to OIA, call (202-307-3286) or fax (202-514-8625).
- C In the event that an employee is sued for reporting violations or alleged violations of the Standards of Employee Conduct, when notified, an OGC representative will provide the employee with its understanding of 28 CFR with regard to legal representation.
- C All Bureau staff may also report waste, fraud, abuse, mismanagement, and prohibited personnel practices defined in 5 U.S.C. Section 2302(b) directly to the Office of Special Counsel, an independent government agency. The reporting hotlines are either (1-800-872-9855) or (202-643-7188). More information about the Office of Special Counsel and its functions can be found at its website, www.osc.gov.

b. **CEO Reporting.** Upon becoming aware of any possible violation of the Standards of Employee Conduct (either through a report from staff or through personal knowledge), the CEO at the institution, Regional Office, or Central Office Division, or his or her designee, is to report the violation to OIA in accordance with the following time frames.

- (1) **Report Immediately.** Classification 1 and 2 Cases must be reported to OIA immediately. OIA is to be notified of Classification 1 and 2 cases, including:

- C the identity of the complainant(s), subject(s), witness(es), and victim(s);
- C the details of the allegation(s); and
- C any corroborating evidence.

In the event that a Classification 3 case is complex and would result in severe disciplinary or adverse action, the above referenced reporting procedures should be followed.

Notification to OIA will be made within 24 hours (not to include weekends and holidays) of the time management learns of the matter.

- (2) **Referral to the FBI/Other Law Enforcement Agencies.** When it is suspected that criminal conduct has occurred, the CEO may refer the matter directly to OIA and to the local FBI simultaneously.

- (3) **Initial Information.** An OIA Referral of Incident form (BP-S193) is used to organize the information to be provided in the telephonic reporting of cases listed in subsection b.(1) of this section. **The subject of the allegation or complaint must not be questioned or interviewed prior to OIG clearance and OIA's approval.** This is to ensure against procedural error and safeguard the rights of the subject.
- (4) **Supporting Documentation.** Supporting documentation, such as victim or witness statements, medical reports, photos, and related memoranda, must be transmitted via facsimile to OIA (202-514-8625) **immediately, but not later than 24 hours** after the telephonic report. (If an inmate alleges physical or sexual abuse by a staff member and has not received a medical examination, the CEO must arrange an immediate, confidential medical examination and forward a copy of the results to OIA as soon as possible.)

CEOs must notify OIA before initiating investigations involving any misconduct alleged against management staff occupying GS-13 or above positions. OIA will coordinate further action with OIG. The OIA referral of incident form must be completed on all management staff in positions GS-13 and above.

Unless the CEO and the Chief of OIA agree to a different method, ordinarily, investigations involving Classification 3 cases are to be conducted using local resources.

Contact OIA immediately, if there is any question as to the classification of the misconduct.

It is important to note that while case classifications are many times based on limited information, as an investigation unfolds, the severity of misconduct may increase or decrease, thereby moving it into another classification.

c. **Referral to OIG.** OIA will refer Classification 1 and 2 allegations and, where appropriate, Classification 3 allegations to OIG for review.

- C OIG will advise OIA of its decision either to investigate the matter or defer it to the Bureau for an administrative investigation.
- C OIG may refer criminal matters (i.e., physical abuse, sexual abuse of an inmate) to the Department of Justice, Civil Rights Division (CRT), for prosecutorial

consideration under the provisions of the Sexual Abuse Act of 1986 and other applicable statutes.

If OIG or CRT accepts the case, no further action may be taken at the institution, regional, or Central Office level without OIG's or CRT's approval.

C Normally, OIA will serve as the contact point for all communication between institution, regional, and Central Office staff and OIG or CRT in these cases.

C In cases when field staff are in contact directly with OIG, status updates will be reported to OIA regularly.

d. **Notification to CEOs.** OIA will notify the CEO originating the referral immediately when a case has been deferred back to the Bureau for investigation.

C The CEO and OIA are to decide jointly whether the case is to be investigated locally or if OIA is to conduct an on-site investigation.

C The OIA agent assigned to the case is to advise the CEO of OIG's decision.

9. **INVESTIGATIONS.** OIA is responsible for oversight of all staff investigations, whether they are conducted by OIA or non-OIA personnel.

C During the course of these investigations, CEOs and investigators shall follow the Privacy Act.

C OIA will have the authority to monitor and direct those investigations conducted by non-OIA Bureau personnel.

C Institutions will maintain regular communication with OIA during the course of the investigation.

C Administrative investigations of alleged staff misconduct shall be conducted by staff trained in investigative techniques.

C OIA must notify OIG immediately of any additional allegations of criminal wrongdoing that develop during the course of an investigation.

To ensure that investigations are as thorough as possible, the following information should be discussed between the institution and OIA:

- C who will conduct the local investigation;
- C possible involvement with outside agencies;
- C the sequence used to conduct the investigation; and
- C the use of recording devices, surveillance techniques, polygraphs, etc.

Also, it may become evident during consultation between a CEO and OIA that OIA on-site involvement is necessary. Therefore, frequent communication between the respective OIA agent and field investigator or CEO is vital during the investigation.

a. Interviewing Bargaining Unit Employees

- C Refer to Article 6 of the Master Agreement (Employee Rights) for representational rights of bargaining unit employees. For further information, review the labor statute and consult with the Labor Law Branch (LLB) or Labor Management Relations (LMR) Branch.

b. Interviewing Subjects. The field investigator or OIA personnel must exercise extreme care to ensure that **all** subjects implicated in wrongdoing are afforded the opportunity to read and sign the **Warning and Assurance to Employee Required to Provide Information form (BP-S194)**, prior to being questioned.

- C Victims, witnesses, and other individuals who are sources of collateral information should not be required to review and sign a form BP-S194.
 - C If, during the course of the investigation, these sources provide information implicating themselves in wrongdoing, the investigator will stop the interview and execute a form BP-S194.
 - C Victims, witnesses, collateral sources, and subjects will be advised at the end of the interview that the subject matter of the interview and any information exchanged with the investigator are confidential and may not be discussed with individuals other than the employee's representative.
- (1) **Warning and Assurance to Employee Requested to Provide Information form (BP-S194)** grants the subject immunity from criminal prosecution, provided the subject does

not knowingly and willfully provide false statements or information.

- (2) In the event the interview of a subject or witness reveals information that may implicate the person criminally, the investigator will immediately suspend the interview and refer the matter to the appropriate law enforcement officials and OIA.
- (3) Normally, the appropriate version of the Warning and Assurance to be used at the local level is the BP-S194.

c. **Staff, Inmate, and Evidence Availability.** All Bureau staff must cooperate fully with all investigative personnel.

- C Staff, inmates, and all documents related to the investigation will be made available to the investigator.
- C Employees who are questioned during the course of an investigation will cooperate fully, pursuant to the provisions of the Standards of Employee Conduct.
- C Employees who are interviewed may not discuss the investigation's subject matter with individuals other than the employee's representative.

d. **Affidavits.** Affidavits addressing all salient issues ordinarily will be obtained during an investigation. Agency investigators must prepare or accept in total the affidavit.

5 U.S.C. Section 303 authorizes agency investigators, including OIA and other specifically designated Bureau employees, to administer oaths.

e. **Duration.** OIA will be sent a status update every 60 days on local investigations which staff are unable to complete within the 60 day time frame. Additionally, employee subject(s) who were interviewed as part of the investigation will be notified as to whether or not their particular case is still active upon request, but no more than every 30 days.

10. **APPROVAL AND USE OF POLYGRAPH EXAMINATIONS**

a. **Circumstances.** Occasionally, it may be appropriate to use a polygraph examination as an investigative tool. Whenever possible, use the FBI or OIG Polygraph Section. All requests for polygraph examinations regarding staff misconduct must be coordinated through OIA.

- C Neither staff nor inmates can be compelled to take a polygraph examination.

b. **Approval.** To ensure the judicious use of polygraph examinations, the Chief, or Acting Chief, OIA, has the sole authority to approve a polygraph examination during the course of internal investigations into staff misconduct.

- C When use of a polygraph examination is contemplated, the CEO must discuss the matter with the Chief, OIA, and must secure his or her approval prior to arranging for the examination.
- C OIA approval for polygraph examinations is not necessary in cases unrelated to staff misconduct or when outside authorities are conducting an external investigation of staff misconduct.

c. **Subject Authorization.** Prior to participating in a polygraph examination, a staff member is required to sign a Polygraph Authorization form (BP-S595). Prior to allowing an inmate to take a polygraph examination, the inmate must sign the appropriate consent form from the Special Investigative Supervisors Manual.

11. APPROVAL FOR USE OF BODY WIRES, CONSENSUAL TELEPHONE MONITORING, AND ELECTRONIC LISTENING/RECORDING DEVICES. The Chief, OIA, must be consulted whenever the CEO contemplates the use of body wires or electronic listening devices in the course of an internal investigation.

- C Office of Enforcement Operations (OEO) approval is required prior to implementation of this course of action. It will be obtained from OEO by the Chief, OIA.
- C Consensual telephone monitoring/recording in an internal investigation requires the approval of the Chief, OIA.
- C OEO approval is also required whenever an outside law enforcement agency conducting a criminal investigation contemplates the use of Bureau personnel. As CEOs are developing investigative strategies which involve Bureau staff in this manner, they must consult with their respective Regional Directors and the Assistant Director, OGC, to ensure all aspects of employee short-term and long-term safety are considered and to be

certain other options for gathering evidence have been explored thoroughly.

An employee's willingness to participate should be taken into consideration prior to covert use of the employee.

The Director will be consulted with a final recommendation.

- C OEO approval is required when an outside law enforcement agency contemplates using an inmate and consensual monitoring devices, furloughs, or extraordinary transfers may be necessary.

12. INVESTIGATIVE REPORTS

a. **Preparation.** When an internal investigation is concluded, an investigative report will be prepared.

- C If prepared by OIA, ordinarily, a copy is forwarded to the applicable Assistant Director, Regional Director(s), CEO(s) involved, and OIG, if necessary.
- C Investigative reports prepared by field personnel will be forwarded to the Chief, OIA, except for Classification 3 cases which only require a one page summary form (BP-S663.012).
- C OIA will provide a copy to OIG, the Regional Director, and/or Assistant Director when applicable.

All parties possessing copies of investigative reports must ensure that the reports are safeguarded from loss or unauthorized disclosure.

- C In making the decision, the Chief, OIA, must approve disclosure of investigative reports pursuant to either FOIA requests or information requested pursuant to 5 U.S.C. Section 7114(b) (the Labor Statute).

OIA, when appropriate, will consult with the Bureau's FOIA Section, LLB Section, or LMR Section in making its decision.

b. **Format and Contents.** Investigative reports will be prepared in narrative form containing findings of fact and conclusions.

- C The investigative report should include the investigator's conclusions based on a review of the evidence and state whether the allegation(s) is/are sustained.
- C Reports from the field, including all affidavits and supporting documentation, will be forwarded to OIA for review and clearance before any disciplinary action is proposed (except for Classification 3 Cases).
- C OIA reviews these reports to ensure they address the pertinent issues and that the conclusions are factually supported. Any concerns noted will be communicated to the submitting office.
- C Proposing/deciding officials are to consult with the Bureau's LLB, LMR Branch labor law or personnel experts as required by the Program Statement on the Standards of Employee Conduct and to use all other available appropriate sources of information to support or mitigate contemplated discipline.

c. **Disciplinary/Adverse Action Reporting.** When disciplinary or adverse action results from an investigation, OIA will receive a copy of the final decision, including proposal and decision letters, as well as any Notification of Personnel Action (SF-50), for inclusion in the case file.

d. **Closing the Case File.** After receiving the final report, the Chief, OIA, or appropriate designee, is to decide whether to close the case file. This decision will be based upon the investigation's findings and other related matters.

OIA must notify CEOs of case closures. Per the Master Agreement, CEOs shall then coordinate notification to the subject(s) of the investigation.

/s/
Kathleen Hawk Sawyer
Director